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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,343	01/16/2004	Bernard Huwer	WFP-0301	7449
24131	7590	10/25/2005		
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER MCCARRY JR, ROBERT J	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,343	Applicant(s) HUWER, BERNARD	
	Examiner Robert J. McCarry, Jr.	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7 and 9 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Buhler (US 4,979,247).

Buhler discloses a machine for treating a track comprised of a first machine frame having an undercarriage for mobility on a track and a second machine frame having undercarriages for mobility on a track. The Examiner is relying on figure 6 for most of the description. The first machine frame 26 is on the right side of figure 6 and is shown to have wheel sets mounted on axles 27. The second machine frame is on the left side of figure 6 and is shown to have an undercarriage with wheels 3 for movement on rails and also has an undercarriage in the form of a caterpillar track 2 for movement on ground without rails. Both undercarriages are connected to the bridge girder through the second machine frame at an end of the machine frame, as shown in figure 6. The caterpillar track undercarriage is vertically adjustable allowing for the machine frame to either ride on rails or on a surface without rails. The first machine frame also has a work cabin disposed on it, shown on the right of figure 6. While not shown it is understood that the machine frames form part of a train and that the train would have a locomotive associated with it to provide motive power for moving the train. The two machine frames

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have couplings, not numbered, shown at the ends of each frame and adapted to couple the frames together. A bridge girder 18 extends in the longitudinal direction and includes lifting devices 19. The bridge girder has a first end 18a connected to the first machine frame and a second end 22 having flanged rollers adapted to connect and move along guide rails, shown in figure 5, on the second machine frame in a longitudinal direction. The flanged rollers are mounted on an auxiliary undercarriage connected to the bridge girder 18, also shown in figure 6. The second end 22 and rollers are shown on the left of figure 6 resting on the second machine frame. Adjacent to the rollers on the second end 22 is a conveyor assembly 10a for supporting and moving sections of track in the longitudinal direction towards the bridge girder. The bridge girder is also telescopically extendable, as shown in figure 8. According to column 3, lines 44-62, the beam 18 can be pivoted in a direction perpendicular to the longitudinal direction of travel. It is understood that a direction perpendicular to the longitudinal direction of travel would be a substantially vertical direction.

Allowable Subject Matter

Claims 5, 6 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Theurer et al (US 5,961,271), Theurer et al (US 5,778,794) and Theurer et al (US 6,422,150) all disclose types of track renewal machines.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (571) 272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert J. McCarry, Jr.
Examiner
Art Unit 3617

RJM
October 17, 2005


S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600